

Memo

To: **Montana Grain Growers Association**

From: Terry Whiteside

Date: September 12, 2006

Re: **Transportation Report**



Rail Labor and Captive Rail Customers Are Finding Issues in Common

From the United Transportation Union Website - October 10, 2006

STB 'wholly owned' by rails

The Association of American Railroads (AAR) will conduct its third annual North American Railroads' Customer Forum Sept. 13 in St. Louis.

It is supposed to "address shippers' service complaints," but if run like previous ones, the railroads' captive shippers will be treated much like railroad employees. Shippers will be lectured on how railroads don't earn high enough profits (and thus require higher rates) and that railroad service problems are mostly the shippers' fault.

AAR President Ed Hamberger likely will arrive arm-in-arm with the industry's chief regulator, the Surface Transportation Board's new chairman, Chip Nottingham. The second Republican STB member, Doug Buttrey, will be close by.

A so-called "independent" Wall Street analyst will be there to reinforce the railroads' complaints of not earning high enough profits. Shippers will not be told the analyst is paid by the AAR.

Perhaps no industry in America is as dismissive and outright hostile to its major customers and employees as are America's major railroads, which hold unrestrained monopoly power and are largely exempt from the nation's antitrust laws.

The UTU and other rail labor unions have formed an alliance with rail captive shippers, sharing a slogan, "They use us – then abuse us."

For decades, rail labor has assisted railroads in gaining tens of billions of dollars in tax breaks, loans and subsidies from Congress, only to be thanked with job reductions, endless demands for givebacks and vicious discipline policies, while the carriers and their executives earn record profits and bonuses.

Captive shippers, which are forced to pay monopoly rates because they do not have effective transportation alternatives, have been paid back with shoddy service and demands for still higher rates.

Shippers have demonstrated that so-called railroad regulation by the STB, previously the Interstate Commerce Commission, is largely a sham. No wonder the railroads' principal regulatory agency is derisively called a "wholly owned subsidiary of the AAR."

Indeed, rail regulators take high-paying jobs with railroads after they serve their terms regulating railroad rates and service -- and mostly ruling in favor of the railroads.

Former STB Chairman Linda Morgan now works for a law firm paid by Union Pacific. One study of her voting record found that she sided with Union Pacific in some 85 percent of the complaints filed at the ICC/STB by shippers and other railroads against the UP.

At a regulatory seminar in Washington, D.C., last year, AAR President Hamberger literally grabbed the microphone from then STB Chairman Roger Nober to protest aloud what a shipper had said. Nober smiled. When Nober departed the agency, he went to work for a law firm representing BNSF and other rail carriers.

Replacement regulators, meanwhile, take their posts without revealing much about how they got their jobs (almost always railroads help them by lobbying on their behalf at the White House and within the Senate). And once at the STB, these regulators cannot avoid taking note of who hired their predecessors -- and what the railroads pay them.

Current STB member Buttrey previously worked for the same lobbying firm that employed Ed Hamberger before Hamberger went to the AAR. Buttrey, when nominated to the STB, enjoyed substantial railroad support, even though he had neither railroad experience nor demonstrated knowledge of the rail regulatory process.

Buttrey was nominated by President Bush -- two of whose high-rolling campaign contributors are BNSF Chairman Matt Rose and UP Chairman Dick Davidson (each of whom raised more than \$200,000 for "W's" re-election campaign. And, of course, Vice President Cheney previously was on the UP board of directors, while former CSX Chairman John Snow was Bush's treasury secretary.

As for Nottingham, he previously was Virginia's transportation commissioner where he gained exposure to Snow and former NS CEO David Goode, both of whose railroads are headquartered in Virginia. Like Buttrey, Nottingham had substantial railroad support for his Senate confirmation.

And what have rail regulators been allowing railroads to get away with?

A rail captive shipper wrote in the STB bar association's newsletter that, "There is precious little reason for shippers to go to the STB for relief any more, because they cannot get relief." In fact, only the largest of captive shippers are able to challenge rail rates at the STB because the costs of hiring necessary lawyers, economists and other experts can exceed \$3 million -- and cases can drag on for years.

According to rail captive shippers, each time they bring in new evidence that the STB says was lacking previously, the STB finds another reason to rule against captive shippers.

Many of the economists and lawyers employed by the STB previously worked for railroads.

Coal shippers say that despite a 250-year supply of coal in Wyoming's Powder River Basin, "power companies have had no choice but to turn to other sources" of energy such as imported crude oil and imported coal because of poor rail service.

To keep an electricity generating station operating, Energy Velocity was forced to import coal from Russia through the port of Providence, R.I.

The Southern Company, a Southeast electric utility, is testing Russian coal for possible purchase.

To keep its generating stations operating, Arkansas Electric Cooperative imported coal from Colombia and Indonesia, and the Municipal Electric Authority of Georgia imported coal from Indonesia.

The North American Electric Reliability Council says if railroads do not solve their coal-delivery problems, consumers can expect brownouts and even blackouts.

One crucial reason railroads can't handle the business is because, notwithstanding record profits, they refuse to hire sufficient new employees – and the new employees they do hire are leaving in large numbers because of 24/7 availability policies, 30-day work schedules and crushing fatigue.

The American Chemistry Council has joined with rail labor to warn Congress about a ticking rail-safety time-bomb as fatigued and hastily trained new employees operate trains carrying some of the most deadly hazmat known to humanity. A recent ABC 20/20 report cast a chilling view of the extreme dangers faced by families living in cities and towns through which hazmat trains operate.

According to the American Chemistry Council, the STB is permitting railroads to charge captive shippers more than twice as much as those with effective transportation alternatives.

Rail captive shippers say railroads are charging at least a billion dollars more in fuel surcharges on shipments than the railroads' actual increase in fuel costs.

Recently, BNSF more than doubled the price it charges Montana's Basin Electric Power to deliver coal to its generating stations.

To bring a rate complaint before the STB, a captive shipper must first pay a filing fee of \$140,600. By contrast, the filing fee to bring a civil case in a federal district court is \$150. But rail captive shippers cannot sue railroads in federal district court or seek Justice Department assistance because railroads are immune from the antitrust laws and federal courts order that rail rate and service complaints to be filed at the STB.

This abuse by railroads of shippers and labor extends even to Amtrak. The creation of Amtrak saved railroads billions of dollars by not having to operate passenger trains. But while the law – as a condition of the freights being able to exit the passenger market -- instructs freight railroads to give Amtrak passenger trains preference over freight trains, the freight railroads are murdering Amtrak. In June, more than 100,000 passengers rode Amtrak trains that reached their final destinations more than four hours late – the majority on routes over CSX and UP.

Additionally, it is the rail regulators who found the loophole allowing railroads to sell and lease line segments and yards to so-called non-railroad holding companies without attaching labor protective conditions that Congress intended for rail-asset transactions. In spite of continued protests by rail labor, these regulators continue to approve these transactions, designed specifically to force reduced wages and benefits on career railroaders.

Recently, rail labor joined rail captive shippers in supporting legislation to subject railroads to the antitrust laws and end the industry's cozy relationship with its regulators. Many electric utilities captive to the

railroads also are seeking to shift responsibility for regulation of rail rates and service to the Federal Energy Regulatory Commission.

From a shipper standpoint, rail labor has pointed out that Nottingham, who is new to the STB, has an opportunity to mark a different course for the agency in which it more vigorously reviews railroad activities and ensures competition in the rail industry.

"Rail labor's solidarity with shippers will continue so long as railroads continue to use us – then abuse us," said UTU International President Paul Thompson.

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